

Appeal from the decision of the California Desert District Office, Bureau of Land Management, disapproving mining plans of operations for mining claims CA MC 104586, CA MC 104587, CA MC 110834, CA MC 110835, CA MC 111304, and CA MC 111305.

Affirmed in part, vacated in part, and remanded.

1. Federal Land Policy and Management Act of 1976: Wilderness

The Secretary of the Interior is required by sec. 603(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of their wilderness characteristics.

2. Federal Land Policy and Management Act of 1976: Wilderness -- Mining Claims: Generally

A decision by BLM disapproving plans of operations concerning mining claims located within wilderness study areas will be upheld where BLM's determination, pursuant to 43 Subpart 3802, that proposed operations would impair the suitability of the study areas for preservation as wilderness is reasonable based on the record and the mining claimant fails to present any new, relevant information in support of an appeal from BLM's decision.

3. Federal Land Policy and Management Act of 1976: Wilderness -- Mining Claims: Generally

Mining plans of operations concerning claims or portions thereof located outside a wilderness study area are properly

evaluated under the surface management provisions of 43 CFR Subpart 3809, rather than under the provisions governing lands under wilderness review contained in 43 CFR Subpart 3802.

APPEARANCES: Keith R. Kummerfeld, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE GRANT

Keith R. Kummerfeld has appealed the July 14, 1982, decision of the California Desert District Office, Bureau of Land Management (BLM), Riverside, California, disapproving his two mine plans of operation submitted to BLM's Barstow Resource Area Office on June 6, 1982. One of the disapproved plans concerns appellant's mining claims CA MC 104586 (REDPASS PL 1), CA MC 104587 (REDPASS PL 2), CA MC 110834 (REDPASS PL 3), and CA MC 110835 (REDPASS PL 4); the other plan concerns his mining claims CA MC 111304 (ROD PL 3) and CA MC 111305 (ROD PL 4).

BLM identified the REDPASS PL claims as being located within the Soda Mountains wilderness study area (CDCA-242) and the ROD PL claims as being located within the Rodman Mountains wilderness study area (CDCA-207); therefore, BLM evaluated appellant's plans of operation under the provisions applicable to land within wilderness study areas, 43 CFR Subpart 3802. BLM concluded that the activities proposed by appellant "would impair the naturalness of [the] study areas," and that this impairment "would result from impacts that are not capable of being reclaimed to a condition of being 'substantially unnoticeable' in the study areas as a whole by the time the Secretary of the Interior is to send his recommendations on those areas to the President." Decision of July 14, 1982. On the basis of this finding, BLM disapproved the plans of operation but informed appellant that, "subject to mitigating measures, [BLM] could allow [appellant] to make a limited number of backhoe trenches and auger holes, but first [appellant would] need to specify the dimensions of the trenches and flag the exact locations of all proposed trenches and auger borings." Id.

As is explained below, the Board affirms BLM's decision, except as it pertains to the areas of the REDPASS PL 3 and 4 claims that the Board finds to be located outside the Soda Mountains wilderness study area.

[1] Section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976), requires, in subsection (a), that the Secretary of the Interior review roadless areas of 5,000 or more acres identified in the inventory of public lands as having wilderness characteristics described in section 2(c) of the Wilderness Act of September 3, 1964, 1/ and recommend to the President which of these areas are suitable for preservation as wilderness. Section 603 further requires, in subsection (c), that during the period of review of such areas the Secretary shall manage them so as not to allow impairment of their suitability for preservation as wilderness.

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1/ 16 U.S.C. § 1131 (1976).

[2] BLM has determined that the Soda Mountains and the Rodman Mountains are areas of public lands having "wilderness characteristics" within the meaning of section 603(a) of FLPMA. 2/ During the period of review of these areas, "and until Congress has determined otherwise," they are to be managed in accordance with the nonimpairment mandate of section 603(c) of FLPMA, as now implemented under the provisions of 43 CFR Subpart 3802. 3/

Four of the mining claims covered by appellant's plans of operations are located entirely within these wilderness study areas: The REDPASS PL 1 and 2 are within the Soda Mountains wilderness study area; the ROD PL 3 and 4 claims are within the Rodman Mountains wilderness study area. Additionally, it appears from the record that a small, southeastern portion of the REDPASS PL 4 claim is located within the Soda Mountains wilderness study area. Appellant's proposed activities in connection with these claims include road building and open pit mining operations using dozers, rippers, and loaders which will affect approximately 160 acres on the ROD PL claims and 360 acres on the REDPASS PL claims. As was noted previously, BLM's disapproval of the plans followed its finding that the proposed activities would impair the suitability of the affected wilderness study areas for inclusion in the wilderness preservation system. The record supports the BLM finding. Clearly the resulting impact of man would not be substantially unnoticeable.

In addressing BLM's decision, appellant asserts that his claims are located for strategic minerals that appear to be commercially recoverable. He questions the suitability of the land for wilderness preservation, noting that the claims are in the vicinity of major electrical power transmission lines and associated maintenance roads and traffic. Appellant's statement concludes with criticism of the Department's decision to study the areas including his mining claims for possible inclusion in the wilderness preservation system and with his opinion that these areas are "not wilderness by definition."

Appellant's statement disputing BLM's decision is essentially the same as the one he offered in an earlier appeal concerning other mining claims he

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2/ 44 FR 19044-45 (Mar. 30, 1979); 45 FR 1456-57 (Jan. 7, 1980); 45 FR 9798 (Feb. 13, 1980); 45 FR 75574-76, 75583-84 (Nov. 14, 1980); 47 FR 29788, 29795 (July 8, 1982). These determinations were the subject of protests which BLM dismissed. Subsequently, the Board dismissed the appeal from BLM's decision concerning the Rodman Mountains wilderness study area (CDCA-207), in its order of Aug. 5, 1980 (American Motorcyclist Association, IBLA 80-272), and affirmed BLM's decision concerning the Soda Mountains wilderness study area (CDCA-242), in National Outdoor Coalition, 59 IBLA 291 (1981).

3/ A central element of the provisions of 43 CFR Subpart 3802 is the requirement for BLM's approval of a plan of operations in conjunction with most mining operations conducted within a wilderness study area. Appellant's proposed operations are subject to this requirement. See 43 CFR 3802.1-1; cf. 43 CFR 3802.1-2 and 3802.1-3 (which provide exceptions to the requirement not relevant under the facts of this case).

has located in the Rodman Mountains wilderness study area. See Keith R. Kummerfeld, 72 IBLA 1 (1983). In affirming BLM's decision disapproving appellant's plan of operations in that case, the Board stated: "None of appellant's arguments are directed to the basis for BLM's decision. Appellant ignores the fact that the Secretary is required by law to regulate mining operations in [wilderness study areas] to prevent impairment of the suitability of such areas for inclusion in the wilderness system." Id. at 2.

The suitability of an area for preservation as wilderness in light of conflicting uses of the land, including mineral potential, is a proper subject of analysis in the study phase of the wilderness review process. Union Oil (On Reconsideration), 58 IBLA 166, 170 (1981). However, this does not lessen the obligation to manage the land so as to prevent impairment of wilderness characteristics pending a final decision on wilderness designation. While the ultimate decision whether the Soda Mountains and Rodman Mountains wilderness study areas will be made part of the wilderness system may vindicate appellant's opinion that they are not suitable for wilderness designation, so long as these areas remain under study they are to be managed in accordance with the provisions of section 603(c) and 43 CFR Subpart 3802, and appellant must concern himself with the requirements set forth in those provisions if he is to conduct operations on his mining claims located within the study areas. <sup>4/</sup>

BLM's conclusion that appellant's plans of operations, if effected, would impair the suitability of the study areas for preservation as wilderness was reasonable in view of the scale of open pit operations outlined in the plans. Appellant presented no new information to the Board in support of a reevaluation of BLM's finding in this regard; thus, the Board will uphold BLM's decision disapproving appellant's plans of operations to the extent that the decision relates to activities proposed to be conducted within the Soda Mountains and Rodman Mountains wilderness study areas.

[3] The Board concludes, however, that BLM improperly evaluated appellant's plan of operations relative to the REDPASS PL 3 claim and a large portion of the REDPASS PL 4 claim. As is noted above, the record reveals that all of the REDPASS PL 3 claim and all but a small portion of the REDPASS PL 4 claim are located outside the boundary of the Soda Mountains wilderness study area. Accordingly, appellant's plan of operations with respect to those claims must be evaluated under the provisions of the Department's "surface management" regulations in 43 CFR Subpart 3809, rather than under the provisions of 43 CFR Subpart 3802. Thus, the Board will vacate BLM's decision to the extent that it pertains to the REDPASS PL 3 claim and the portion of the REDPASS PL 4 claim located outside the Soda Mountains wilderness study area, and remand the case to BLM for the necessary further evaluation.

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<sup>4/</sup> The record discloses that appellant's claims were all located subsequent to enactment of FLPMA (Oct. 21, 1976). Thus, there is no issue of the existence of valid existing rights which might allow development even with impairment, subject to the prohibition of unnecessary or undue degradation. See Dale F. Gimblett, 60 IBLA 341 (1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, vacated in part, and the case is remanded to BLM for further action consistent with this decision.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

Edward W. Stuebing  
Administrative Judge